

PT 96-15  
Tax Type: PROPERTY TAX  
Issue: Charitable Ownership/use

STATE OF ILLINOIS  
DEPARTMENT OF REVENUE  
OFFICE OF ADMINISTRATIVE HEARINGS  
SPRINGFIELD, ILLINOIS

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LUTHERAN GENERAL HEALTHSYSTEM	)		
Applicant	)		
	)	Docket #	92-16-761
v.	)		
	)	Parcel Index #s	09-15-303-014
	)		09-15-303-015
THE DEPARTMENT OF REVENUE	)		
OF THE STATE OF ILLINOIS	)		

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RECOMMENDATION FOR DISPOSITION

Appearances: Mr. Dennis M. Nolan of McCarthy and Associates, appeared on behalf of Lutheran General HealthSystem.

Synopsis:

The hearing in this matter was held at 100 West Randolph Street, Chicago, Illinois, on January 23, 1996, to determine whether or not Cook County Parcels numbered 09-15-303-014 and 09-15-303-015 qualified for exemption from real estate tax for the 1992 assessment year.

Ms. Josie Disterhoft, Director of the Children's Day Care Center of Lutheran General HealthSystem (hereinafter referred to as the "Applicant"), and Ms. Beth Lakier, Director of Finance of the Children's Day Care Center of the applicant, were present and testified on behalf of the applicant.

The issues in this matter include first, whether the applicant was the owner of these parcels during the 1992 assessment year. The second issue is whether the applicant is a charitable organization. The last issue is whether the Children's Day Care Center, located in the building on this parcel was being used for charitable purposes during the 1992 assessment year. Following the submission of all of the evidence and a review of the record, it is determined

that the applicant owned these parcels during the 1992 assessment year. It is also determined that the applicant is a charitable organization. Finally is determined that the applicant used these parcels and the building thereon for charitable purposes during the 1992 assessment year.

Findings of Fact:

1. The position of the Illinois Department of Revenue (hereinafter referred to as the "Department") in this matter, namely that Cook County Parcel No. 09-15-303-015 and the building thereon, except for 19,164 square feet of said building used as the Children's Day Care Center qualified for exemption for the 1992 assessment year, was established by the admission in evidence Department's Exhibits 1 through 5.

2. On February 26, 1993, the Cook County Board of Appeals transmitted a Statement of Facts in Exemption Application concerning Cook County Parcel No. 09-15-303-015 for the 1992 assessment year to the Illinois Department of Revenue. (Dept. Ex. No. 1)

3. At the hearing on parcel No. 09-15-303-015, Mr. Nolan, the attorney for the applicant, made a motion that the Statement of Facts in Exemption Application filed in this matter, be amended on its face by the addition of parcel No. 09-15-303-014, which is a small parcel which measures 1.55 feet by 244.02 feet. Said parcel No. 09-15-303-014 was created after the fact by the independent action of the Cook County Assessor and is a part of the legal description of the property which is at issue in this proceeding. (Tr. pp. 9 & 10) (Dept. Ex. Nos. 1AQ & 1AR)

4. The Administrative Law Judge granted Mr. Nolan's motion and amended the Statement of Facts in Exemption Application, on its face. (Tr. p. 10)

5. On January 20, 1995, the Department notified the applicant that it was exempting parcel No. 09-15-303-015 and the building thereon except for the 19,164 square feet of said building used by the Children's Day Care Center. (Dept. Ex. No. 2)

6. On February 7, 1995, the attorney for the applicant requested a formal hearing in this matter concerning the denial of the 19,164 square feet of the building on this parcel occupied by the Children's Day Care Center. (Dept. Ex. No. 3)

7. The hearing held in this matter on January 23, 1996, was held pursuant to that request.

8. The Articles of Amendment to the Articles of Incorporation dated July 29, 1987, restated the purpose clause of the Articles of Incorporation of the applicant in part, as follows:

(a) To promote, support, develop and encourage the charitable, educational and scientific purposes of the following organizations: The American Lutheran Church, and its successor organization, Evangelical Lutheran Church in America, and any other organization formally affiliated with the Corporation or either of the foregoing organizations if exempt from federal taxation under Section 501(c)(3) of the Internal Revenue Code of 1986, as amended,.... (Dept. Ex. No. 1Y)

9. A predecessor of the applicant acquired this parcel by a quit claim deed dated September 26, 1984. (Dept. Ex. No. 1P)

10. Since the Department exempted parcel No. 09-15-303-015 and the building thereon, except for the portion of the building occupied by the Children's Day Care Center, it is obvious that the Department has determined that the applicant is a charitable organization and that it owned this parcel during the 1992 assessment year. The primary issue in this case then is whether the Children's Day Care Center, operated by the applicant, used the area of the building which it occupied for charitable purposes during the 1992 assessment year.

11. The director of the Children's Day Care Center testified that the mission of the center during 1992 was generally to create, develop and operate children's day care programs for the community and for the employees of the applicant. (Tr. p. 25)

12. Children's Day Care Center started in 1983. At that time, the needs of the employees of the applicant included the need for flexible scheduling, the need for drop-in care, and the need for expanded hours. (Tr. p. 39)

13. Concerning the needs of the community, the primary need was for quality day care. (Tr. p. 39)

14. The Children's Day Care Center has substantially higher qualifications for all of its staff positions than is required by the Illinois Department of Children and Family Services, which licenses Children's Day Care Center. (Tr. pp. 29-31)

15. The Children's Day Care Center, also during 1992, provided day care and educational activities for children with special needs. This would have included infants who are on an apnea monitor, children with cerebral palsy and also children with severe language difficulties. (Tr. p. 32)

16. The Children's Day Care Center provides child care for infants beginning at 6 weeks of age and concludes with an all day accredited kindergarten. (Tr. p. 33)

17. During 1992, the Children's Day Care Center was open from 6:00 A. M. to 9:00 P. M. five days a week. (Tr. p. 36) At that time the employees of the applicant also required flexible scheduling and drop in care, both of which were provided by the Children's Day Care Center. (Tr. p. 39)

18. Because the applicant's senior day care is also located in this building, the Children's Day Care Center is able to have intergenerational activities with the seniors, which are believed to be helpful to both groups. (Tr. pp. 36 & 37)

19. During 1992, there were 260 children enrolled in the Children's Day Care Center. (Tr. p. 44) That total number included 182 children of the employees of the applicant and 78 children of members of the community. (Tr. p. 45)

20. During 1992, the tuition for the children of the employees of the applicant was lower than the tuition for the children of the members of the community. The applicant considers this lower tuition for the children of its employees to be subsidized by the applicant. (Tr. pp. 48 & 49)

21. Children's Day Care Center both reduces and waives fees in cases of need both for the children of the employees of the applicant and for children of members of the community. (Tr. pp. 50-52) During 1992, Children's Day Care Center waived tuition totaling more than \$13,000.00 for 15 families. (Tr. p. 53)

22. During 1992 the Children's Day Care Center operated at a net loss of over \$160,000.00. These funds were made up by the applicant from its general fund sources, which included public and private charity. (Tr. pp. 55 & 56)

23. Children's Day Care Center, since it attempts to accommodate all that it can within its licensed capacity, and since it provides flexible scheduling, evening care and emergency drop in care, both to the employees of applicant and the members of the community, provides the benefits of its services to an indefinite number of persons. (Tr. p. 59)

24. Neither the Children's Day Care Center nor the applicant has any capital, capital stock or shareholders and no one benefits from the enterprise. (Tr. pp. 59 & 60)

#### Conclusions of Law:

Article IX, Section 6, of the Illinois Constitution of 1970, provides in part as follows:

The General Assembly by law may exempt from taxation only the property of the State, units of local government and school districts and property used exclusively for agricultural and horticultural societies, and for school, religious, cemetery and charitable purposes.

Illinois Revised Statutes, Chapter 120, Paragraph 500.7 exempts certain property from taxation, in part as follows:

All property of institutions of public charity, all property of beneficent and charitable organizations, whether incorporated in this or any other state of the United States,...when such property is actually and exclusively used for such charitable or beneficent purposes, and not leased or otherwise used with a view to profit;....

It is well settled in Illinois, that when a statute purports to grant an exemption from taxation, the fundamental rule of construction is that a tax

exemption provision is to be construed strictly against the one who asserts the claim of exemption. International College of Surgeons v. Brenza, 8 Ill.2d 141 (1956). Whenever doubt arises, it is to be resolved against exemption, and in favor of taxation. People ex rel. Goodman v. University of Illinois Foundation, 388 Ill. 363 (1944). Finally, in ascertaining whether or not a property is statutorily tax exempt, the burden of establishing the right to the exemption is on the one who claims the exemption. MacMurray College v. Wright, 38 Ill.2d 272 (1967).

In the case of Methodist Old Peoples Home v. Korzen, 39 Ill.2d 149 (1968), the Illinois Supreme Court laid down six guidelines to be used in determining whether or not an organization is charitable. Those six guidelines read as follows: (1) the benefits derived are for an indefinite number of persons; (2) the organization has no capital, capital stock, or shareholders, and does not profit from the enterprise; (3) funds are derived mainly from private and public charity, and are held in trust for the objects and purposes expressed in its charter; (4) charity is dispensed to all who need and apply for it; (5) no obstacles are placed in the way of those seeking the benefits; and (6) the primary use of the property is for charitable purposes. In view of the fact that the applicant waives or reduces tuition fees in cases of need, I conclude that the benefits derived were available to an indefinite number of persons, charity was dispensed to all who needed and applied for it, and that no obstacles were placed in the way of those seeking the benefits. I have previously found that the applicant has no capital, capital stock or shareholders, and does not profit from the enterprise. In view of the Children's Day Care Center's net loss for 1992, I conclude that the applicant was required to pay those funds out of the general income of the applicant, which included both public and private charity. Consequently, I conclude that the funds to operate Children's Day Care Center were derived from tuition fees and public and private charity, which was held in trust for the objects and purposes expressed in the charter. The primary use of the area occupied by

Children's Day Care Center in the building on the parcels here in issue, during 1992, was, I conclude, for charitable purposes.

I therefore recommend the Cook County Parcels Numbered 09-15-303-014 and 09-15-303-015 and the building thereon be exempt from real estate tax for the 1992 assessment year.

Respectfully Submitted,

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George H. Nafziger  
Administrative Law Judge  
September 13, 1996